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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Christof Westenfelder

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06/28/2011

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EXAMINER

WEHBE, ANNE MARIE SABRINA

ART UNIT

PAPER NUMBER

1633

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ATTACHMENT TO ADVISORY ACTION

3. Cont. Claim 1 has been amended to introduce new limitations not previously considered which would require additional search and consideration.

11. Cont. Applicant's request for consideration has been fully considered but has not been found persuasive in overcoming the rejections of record.

1) The applicant argues that the finality of the previous office action, mailed on 11/19/10, was improper because in their opinion, the new rejection of claim 51 was not necessitated by applicant's amendment. In response, this is not agreed. Claim 51 originally recited a composition comprising "a therapeutic amount of hematopoietic stem cells and mesenchymal stem cells". The amendment received 6/14/10 amended claim 51 to recite a composition comprising "an active ingredient consisting of a therapeutic amount of mesenchymal stem cells" emphasis added by examiner. Thus, the claim as originally examined and rejected in the first non-final office action of 12/14/09 was properly rejected as being anticipated by Imai et al. who taught a bone marrow composition comprising both hematopoietic stem cells and mesenchymal stem cells and Fibbe et al., who taught a therapeutic mixture of hematopoietic stem cells and mesenchymal stem cells. However, the amended claim 51 recited that the active ingredient in the composition consisted of mesenchymal stem cells. Thus, the limitations of the composition claimed in amended claim 51 had been substantially changed such that a new search was required resulting in a new rejections of this claim as being anticipated by Tabata et al. or Caplan et al. who both teach a composition where mesenchymal stem cells are the sole active ingredient. Thus, it is strongly disagreed that the new grounds of rejection presented in the final office action of 11/19/10 were not necessitated by applicant's amendment to the claims. As such, it is maintained that the finality of the previous office action was proper.

2) Applicant's arguments concerning the rejections of the claims under 35 U.S.C. 103 and 35 U.S.C. 102 are based on the proposed claim amendment submitted with the instant response which has not been entered. As such, applicant's arguments are not found persuasive and the rejections of record are maintained.

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12. Cont. The information disclosure statements (IDS) submitted on 1/7/11 and 5/4/11 were filed after the mailing date of the final rejection on 11/19/10. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements have been considered by the examiner, an initialed and signed copies of the 1449s are attached to this action.

Any inquiry concerning this communication from the examiner should be directed to Anne Marie S. Wehbé, Ph.D., whose telephone number is (571) 272-0737. If the examiner is not available, the examiner's supervisor, Joseph Woitach, can be reached at (571) 272-0739. For all official communications, the technology center fax number is (571) 273-8300. Please note that all official communications and responses sent by fax must be directed to the technology center fax number. For informal, non-official communications only, the examiner's direct fax number is (571) 273-0737. For any inquiry of a general nature, please call (571) 272-0547.

The applicant can also consult the USPTO's Patent Application Information Retrieval system (PAIR) on the internet for patent application status and history information, and for electronic images of applications. For questions or problems related to PAIR, please call the USPTO Patent Electronic Business Center (Patent EBC) toll free at 1-866-217-9197. Representatives are available daily from 6am to midnight (EST). When calling please have your application serial number or patent number available. For all other customer support, please call the USPTO call center (UCC) at 1-800-786-9199.

Dr. A.M.S. Wehbé

/Anne Marie S. Wehbé/

Primary Examiner, A.U. 1633